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November 3, 1995

EX PARTE OR LATE FILE

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

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OFFICE OF SECRETARY

RE: Equal Access and Interconnection Obligations Pertaining
to Commercial Mobile Radio Services (CC Docket No. 94-54).

Dear Mr. Caton:

On Thursday, November 2, 1995, David Gross and I, on behalf of AirTouch Communications, met with Regina Keeney, Laurence Atlas, James Coltharp and Michael Wack of the FCC's Wireless Bureau to discuss issues relating to this proceeding. The attached material was distributed. Please associate this material with the above-referenced proceeding.

Two copies of this notice are being submitted to the Secretary in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me at 202-293-4960 should you have any questions or require additional information concerning this matter.

Sincerely,

Kathleen Q. Abernathy

Attachment

cc: Laurence Atlas
James Coltharp
Regina Keeney
Michael Wack

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AirTouch Communications

CMRS Interconnection Issues CC Docket No. 94-54

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Existing Statutory Framework

Omnibus Budget Reconciliation Act of 1993 (Budget Act) amended Section 2(b) and Section 332 of Communications Act by reclassifying all existing mobile services as either CMRS or PMRS.

Amended sections 332 and 2(b) rewrote jurisdictional boundaries over mobile services so that states no longer enjoy rate and entry regulatory authority over CMRS providers.

State authority is now limited to overseeing the “terms and conditions” of CMRS and PMRS services.

Intent of jurisdictional provisions of Section 332, according to the House Report, are:

... [t]o foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure. H.R. Rep. No. 103-111, at 260.

FCC itself has stated that Congress “charged the Commission with creating a uniform national regulatory scheme for all wireless services.” FCC Brief in Second Circuit in response to appeal by Connecticut Dept. of Public Utility Control.

FCC Authority Over Intrastate CMRS Rates

Some parties have argued that although the Budget Act awards the FCC sole jurisdiction over intrastate CMRS rates, it does not expressly authorize the Commission to **regulate** CMRS rates, thus creating a regulatory void.

This theory requires a convoluted interpretation of the statutory language and is inconsistent with an analysis of the plain language and legislative history of the Budget Act.

A logical and reasonable interpretation of the language is that preemption of state jurisdiction, which occurred when Congress gave the FCC primary jurisdiction over CMRS rates and entry, necessarily includes authority to regulate intrastate rates.

Described in another way, Section 332 reserves to the FCC jurisdiction to “occupy the field” of substantive CMRS regulation.

Any other interpretation would lead to a jurisdictional scheme that fails to protect consumers and thwarts the development of nationwide mobile services; something Congress could not have intended.

FCC Jurisdiction Over CMRS Interconnection Issues

The CMRS Regulatory Parity proceeding requires LECs to compensate CMRS providers for terminating traffic that originates on LEC networks.

Since the Budget Act confers the FCC with jurisdiction over CMRS rates and entry, this authority necessarily extends to rates CMRS carriers will charge to local exchange carriers for interconnection of land line calls to the mobile network.

Because it is impossible to separate CMRS interconnection rate issues from LEC interconnection rates issues, FCC preemption over all CMRS to LEC interconnection issues is not only necessary but entirely consistent with the Budget Act and with the Supreme Court's decision in *Louisiana Public Serv. Comm'n v. FCC*.

In addition, since both Congress and the Commission have found commercial mobile radio services form an interstate and nationwide wireless communications network, FCC jurisdiction over interconnection rights will be critical to the development of competition and the creation of a seamless national network.

FCC Jurisdiction Over CMRS Interconnection Issues (Cont'd)

This approach is also consistent with the FCC's decisions to:

- 1) license PCS networks using MTAs and BTAs that do not respect state boundaries; and
- 2) consider all CMRS to CMRS interconnection issues without considering federal and state separation.

The FCC must clearly state its jurisdictional authority to avoid confusion and to conform with the authority granted by Congress.

Interconnection

Billing: Typically for: Call set-up, Call duration (MOU), Call transport (per minute/per mile)

Negotiations verses Tariff

Key Difference:

- Tariffs define business between a carrier and an end user by taking orders.
- Contracts recognize dynamic business opportunities.

AirTouch's experience in last interconnect negotiations proved the following:

- Negotiated contracts, rather than tariffs, allow for the differences between individual carriers in switch technology, network architecture, competitive strategy and traffic patterns.
- Individual negotiation provides incentives for cellular carriers to route call efficiently for more efficient call completion.
- Tariffs give the LEC the exclusive power to decide what services are available on the "menu".
- Discussions and negotiations created new, mutually beneficial business opportunities.

Interconnection (Cont'd)

Conclusions from Negotiation Experience

- Carriers can be a value-added service provider.
- The competitive, dynamic needs of wireless providers can not be defined by "cookie cutter" tariffs.
- Contracts lead to service provisioning:
 - SS7
 - Information services
 - Manage convergence better with flexible interconnection contracts